



State of Delaware
Public Service Commission
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MEMORANDUM

April 21, 2023

TO: The Chair and Members of the Commission

FROM: Malika Davis, Deputy Director 

SUBJECT: IN THE MATTER OF THE APPLICATION OF BLACKROCK, INC., ET AL,
PURSUANT TO 26 DEL. C. § 215 PERTAINING TO THE DISCLAIMER OF
CONTROL OF CERTAIN PUBLIC UTILITIES (FILED MARCH 17, 2023) –
PSC DOCKET NO. 23-0413

Procedural Background:

On March 17, 2023, Blackrock, Inc., et al, ("Blackrock"), on its own behalf and on behalf of its related entities (collectively, the "Applicants") filed an application (the "Application") seeking the Delaware Public Service Commission's (the "Commission") determination that: (1) the direct or indirect ownership of up to 20% of the voting securities of any of the public utilities set forth on Schedule 2 of the Application by the Applicants collectively, or up to 10% of the voting securities of a utility by any individual Applicant Fund or Investment Account (in each case, the "Proposed Ownership") does not constitute control of such Utility by the Applicants pursuant to 26 *Del. C.* § 215(b); or (2) in the alternative, that such Proposed Ownership is approved.

Pursuant to 26 *Del. C.* § 215(d), the Commission is required to act on the Application within thirty (30) days after the filing of the Application. Given the proximity of the filing date of the Application to the March 29, 2023 Commission meeting, and the fact that there was not another Commission meeting scheduled until April 26, 2023, additional time was needed for the Commission to act on the Application. On March 29, 2023, the Commission entered Order No. 10208 which set April 26, 2023 as the hearing date for the Application.

The Application:

Blackrock states that it is a publicly traded investment management firm that provides investment management related services to mutual funds and other investment funds and separate investment accounts domiciled in the United States and foreign countries. These services include the purchase, sale and voting of voting securities on behalf of such investment funds and investment accounts, including the voting securities of public utilities and utility holding companies. The sole business of the Applicants is the provision of investment management and related services. 26 *Del. C.* § 215(b) provides, in part,

“No ... entity... shall acquire control, either directly or indirectly, of any public utility doing business in this State, without having first obtained the approval of the Commission. Any such acquisition of control without such prior authorization shall be void and of no effect. As used herein the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a public utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any such individual or entity, directly or indirectly, owns 10% or more of the voting securities of the public utility. This presumption may be rebutted by a showing that such ownership does not in fact confer control. (emphasis added).

The Applicants are seeking determination that the “Proposed Ownership” does not constitute control of such utility by the Applicants pursuant to 26 *Del. C.* § 215(b), or in the alternative, that such Proposed Ownership is approved.

Exhibit C of the Application included Securities and Exchange Commission (“SEC”) Schedule 13G. The Applicants are able to file an SEC Schedule 13G, rather than a SEC Schedule 13D because its beneficial ownership is in the ordinary course of its business and is for investment purposes only without the purpose of changing or influencing the control of the utilities.¹

Exhibit D of the Application included an authorization from the Federal Energy Regulatory Commission (“FERC”) which permits the Applicants to acquire voting securities in public utilities. The FERC authorization states, in part, “Applicants may not collectively own or control more than 20% of the voting securities of any one U.S. Traded Utility. No Applicant Fund or Investment Account may individually own 10% or more of the voting securities of any one U.S. Traded Utility.”² The FERC authorization was based on the same terms and conditions described in Blackrock’s Application before the Commission, including that it will be a non-controlling investor.

¹ Exhibit C includes SEC Schedule 13G for Middlesex Water Company, Chesapeake Utilities Corporation and Exelon Corporation. Middlesex Water Company is the parent company of Commission regulated Tidewater Utilities Inc. and Southern Shores Water Company. Exelon Corporation is the parent company of Commission regulated Delmarva Power & Light Company.

² See Docket 23-0413, Application, Exhibit D, pg. 4.

Staff notes that Schedule 2³ [REDACTED]

[REDACTED] Pursuant to 26 *Del. C.* § 215(b), control shall be presumed to exist an entity, directly or indirectly, owns **10% or more** of the voting securities of the public utility. (emphasis added)

Staff's Recommendation:

As stated in 26 *Del. C.* § 215(b), “No ... entity... shall acquire control, either directly or indirectly, of any public utility doing business in this State, **without having first obtained the approval of the Commission.**”

This Application was not filed until March 17, 2023 and could not be heard by the Commission before the April 26, 2023 Commission Meeting. While Staff does not believe that the Proposed Ownership constitutes control of a utility by the Applicants pursuant to 26 *Del. C.* § 215(b), Staff notes to the Commission that the presumption of control nonetheless exists until the Applicant rebuts it to the Commission. Accordingly, a presumption of control exists from at least December 31, 2022, (the date provided in Schedule 2), until the Application is heard by the Commission on April 26, 2023 and the Commission finds the Proposed Ownership either does constitute control, or does not constitute control.

Because this presumption of control exists until the Commission finds otherwise, it is not proper for the Applicant to already have ownership exceeding 10% or more of voting securities **prior** to Commission approval. Instead, the Applicants should seek Commission approval **prior** to obtaining any ownership of voting securities which could potentially be considered as “control”. The Applicants should have sought the approval of this Commission pursuant to 26 *Del. C.* § 215(b) prior to holding over 10% of the voting shares of the utilities.

Nonetheless, after having reviewed all the documents and information provided by the Applicants, Staff recommends that the Commission approve the Application on the basis that the Proposed Ownership does not constitute control of a utility by the Applicants pursuant to 26 *Del. C.* § 215(b). Additionally, Staff recommends that if the Applicants contemplate any change in the facts upon which the Commission makes its finding or intends to modify its SEC or FERC authorizations noted above, then the Applicants shall return to the Commission prior to any such change either to seek authority for a change of control under 26 *Del. C.* § 215(b), or to show cause why the proposed change or changes will not alter the rebuttal of the presumption of control. Staff also recommends that the Applicants seek the approval of this Commission pursuant to 26 *Del. C.* § 215(b) prior to holding over 10% of the voting shares of any public utilities.